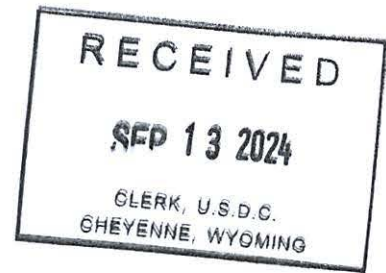


Robert H. Aland
140 Old Green Bay Road
Winnetka, IL 60093-1512
Telephone: (847) 784-0994
Fax: (847) 446-0993
E-mail: rhaland@comcast.net



September 9, 2024

Via US Priority Mail

Ms. Margaret Botkins
Clerk of the Court
United States District Court
2120 Capitol Avenue
Room 2131
Cheyenne, WY 82001-3658

Re: State of Wyoming v. Haaland et al., No. 2:23-cv-00092-ABJ

Dear Ms. Botkins:

I call the Court's attention to the July 19, 2024, Order of the United States Tax Court in *Patel v. Commissioner of Internal Revenue*, Docket Nos. 24344-17, 11352-18 and 25268-18. A copy is enclosed. This Order became available today.

The Order is pertinent and significant in the above case for two reasons. First, the Court stated that "the parties are advised that the briefing is limited to . . . two issues." Second, the Court stated that "given the novelty of the issues, the Court welcomes amicus briefs."

Similarly, in the above case the proposed Amicus Brief is filed for a limited purpose; and the issues it presents are novel.

Please file this letter and the enclosed case and provide copies to Judge Johnson.

Sincerely,

A handwritten signature in black ink that reads "Robert Aland". The signature is fluid and cursive, with the first name "Robert" and last name "Aland" clearly distinguishable.

Enclosure (case)

CC: Jay Jerde - Counsel for Plaintiff - email
Coby Howell - Counsel for Federal Defendants - email



United States Tax Court

Washington, DC 20217

SUNIL S. PATEL AND LAURIE
MCANALLY PATEL,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 24344-17, 11352-18,
25268-18.

ORDER

In T.C. Memo. 2024-34, we sustained the Commissioner's deficiency determinations. The remaining issue for decision in this case is whether Sunil S. Patel and Laurie McAnally-Patel (collectively, the Patels) are liable for accuracy-related penalties. In T.C. Memo. 2020-133, the Court granted, in part, the Patels' Motion for Partial Summary Judgment, striking the penalties under section 6662(a), (b)(2) and (6), and (i)¹ for tax year 2013, and denying the motion as to the remaining penalties. Respondent concedes section 6662(i) penalties for tax year 2016.

Therefore, after concessions and our prior rulings in this case, the following section 6662 accuracy-related penalties for 2013 through 2016 are at issue:

<i>Year</i>	<i>Penalties at Issue</i>
2013	§ 6662(b)(1)
2014	§ 6662(b)(1), (b)(2), (b)(6), and (i)
2015	§ 6662(b)(1), (b)(2), (b)(6), and (i)
2016	§ 6662(b)(1), (b)(2), and (b)(6)

Section 6662(a) and (b)(6) impose a 20 percent accuracy-related penalty on the portion of an underpayment of tax attributable to a transaction lacking economic substance within the meaning of section 7701(o).

¹ Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

Congress codified the economic substance doctrine in 2010 as section 7701(o). *See* Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, sec. 1409, 124 Stat. 1029, at 1067–1070. In relevant part, section 7701(o) provides:

(o) Clarification of economic substance doctrine.--

(1) Application of doctrine.--In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if--

(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and

(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction. . . .

(5) Definitions and special rules.--For purposes of this subsection—

. . . .

(C) Determination of application of doctrine not affected.--The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted. . . .

In their reply brief, petitioners aver that the use of the word “relevant” in section 7701(o) “leaves unaddressed (and ambiguous) the application” of the codified economic substance doctrine. (Doc. 354 at 83–84). Respondent has not addressed whether section 7701(o) requires a threshold relevancy determination.

Accordingly, the Court will order additional briefing so that the parties can address the following issues:

- Whether section 7701(o) requires a threshold relevancy determination; and
- If the Court concludes that section 7701(o) requires a threshold relevancy determination, the circumstance(s) in which the economic substance doctrine is “relevant” within the meaning of section 7701(o).

The parties are advised that briefing is limited to these two issues. Briefs that do not adhere to these parameters will be stricken from the record.

Further, given the novelty of the issues, the Court welcomes amicus briefs.

In consideration of the foregoing, it is

ORDERED that on or before August 23, 2024, the parties shall file simultaneous sur-reply briefs, addressing the issues identified above. Briefs shall

Docket Nos.: 24344-17, 11352-18, 25268-18

Page 3 of 3

conform to the Rules of this Court and shall be limited to no more than 50 pages, exclusive of the case caption and signature block. No party may use appendices, attachments, or exhibits beyond the page limit. It is further

ORDERED that any motion for leave to file a brief as amicus curiae must be filed on or before August 23, 2024. The proposed brief must be lodged at the time the motion is filed. Proposed briefs shall conform to the Rules of this Court and shall be limited to no more than 50 pages, exclusive of the case caption and signature block. No proposed brief may use appendices, attachments, or exhibits beyond the page limit.

(Signed) Courtney D. Jones
Judge

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TO:

Ms. Margaret Botkins
Clerk of the Court
United States District Court
2120 Capitol Avenue
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Cheyenne, WY 82001-3658

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